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Sustaining *Ethics First:* A Three-Year Plan for Leadership and Public Trust

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FINAL REPORT AND RECOMMENDATIONS

EXECUTIVE SUMMARY

This report marks the end of the first full year of the Milpitas Community Ethics Program and is the final deliverable in the City's current contract with Tom Shanks. Ph.D., Consulting, the City's Ethics Consultant for the program's start-up year (2004). This report reviews and assesses the first year of the Program and makes seven recommendations for the future.

Core values are defined as "deeply held beliefs that influence our attitudes, actions, and decisions every day," while **ethics** is defined as "a set of standards, principles, and norms for how we ought to treat one another." The goal of the Ethics Program is to foster public trust by improving the conduct of campaigns and by promoting and maintaining the highest standards of ethical conduct by public officials. Milpitas developed its Code of Ethics through a lengthy public process that began by asking, "When public officials in Milpitas are *at their best* in their treatment of residents and other public officials, what characteristics describe them?" Honest, respect, fairness, stewardship, teamwork, and accountability were the consensus characteristics. Further, these were judged so fundamental to public trust that the Code of Ethics imposes a moral obligation on public officials to practice these characteristics every day in their work with the City.

Eleven problems facing the Ethics Program are described. Consistent main messages (e.g., Leadership from the top supports this program as a multi-year program; this is the program residents designed, want, and need, etc.) and follow-through on these messages is a key way to respond to problems and was part of the Program strategy and design. The report notes that Milpitas has made an excellent start, but needs to reinforce these messages and work to make Program skills into habits for all public officials. The close affinity between the Ethics Program and the new Open Government Ordinance is noted and commended.

The report recommends that public trust in Milpitas will be best served by staying on the course the Program has set during its first year. Further, this recently-completed year should be seen as the first year of a three-year plan to integrate the Ethics First program into the city's culture.

Specifically, the report recommends:

1. that Council extend the time it spends sharing its reasoning with citizens, specifically considering the pocket card, and focusing on educating citizens about the way the Council thinks through important votes (p. 19);

2. that all Commissioners attend the basic workshop and that the City make efforts to get 100% of public officials to sign the Code of Ethics (p. 22);

3. that the Council send a clear signal about disclosure concerning lobbyists by directing the City Attorney to include additional clarifying language and necessary procedures about lobbyists in the new Open Government Ordinance (p. 25);

4. that a permanent oversight committee to guide the Ethics Program comprised of Community Advisory Commission members and staff be appointed as soon as possible and that the program continue this current year (p. 25);

5. that the Ethics Evaluation Panel receive staff assistance to determine facts relevant to complaints and that the Lead Evaluator be empowered to seek resolution of complaints prior to full panel review (p. 26); and

6. that the goals for the next two years, along with program objectives, activities, and budget be approved (details on pp. 26-29).

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The opinions on these pages do not represent the opinions of the Steering Committee, the City of Milpitas, or Santa Clara University or its Ethics Center. The author is solely responsible for this report. Please send any comments to him at *teshanks@comcast.net* .

1. The Report's Purpose and Organization

This report marks the end of the first full year of the Milpitas Community Ethics Program and is the final deliverable in the City's current contract with Tom Shanks Ph.D. Consulting, the City's Ethics Consultant for the program's start-up year (2004). The purpose of these pages is to review and assess the first year of the Program and to recommend any next or future steps.

This report is organized into two parts:

Part 1 focuses on Dr. Shanks' assessment of the Milpitas Community Ethics Program and where the City of Milpitas finds itself today in its efforts to implement the Code of Ethics. This section discusses the goals for the Program, the "big ideas" guiding it, processes and procedures, and reasons for continuing it. The recommendations in this report begin toward the end of this part, in numbered section 15. Recommendations are in bold type.

Part 2 begins in Section 22. This part recommends that public trust in Milpitas will be best served by staying on the course the Program has set during this first implementation year, which began in June, 2004 when the Code of Ethics and Behavioral Standards were approved by the City Council. It recommends seeing the recently-completed year as the first year of a three-year plan to integrate the Ethics First program into the City's culture and make it a sustainable program to build public trust. Finally, this section recommends specific goals, objectives, and activities—and their budget and resource implications.

2. Definitions, Role-Models, Horrible Examples

In March, 2004, The City began its work to develop its by looking at this corporate Code and some other City Codes.

Our Values

Communication

We have an obligation to communicate. Here, we take the time to talk with one another... and to listen. We believe that information is meant to move and that information moves people.

Respect

We treat others as we would like to be treated ourselves. We do not tolerate abusive or disrespectful treatment.

Integrity

We work with customers and prospects openly, honestly and sincerely. When we say we will do something, we will do it; when we say we cannot or will not do something, then we won't do it.

Excellence

We are satisfied with nothing less than the very best in everything we do. We will continue to raise the bar for everyone. The great fun here will be for all of us to discover just how good we can really be.

The Milpitas "pocket card," a decision-making tool, defines **core values** as "deeply held beliefs that influence our attitudes, actions, and decisions every day." *Respect* and *integrity* are examples of core values in the example above. Human experience over time has shown that such core values help human beings to flourish, both the person practicing the value and everyone with whom that person has contact.

Ethics is defined as "a set of standards, principles, and norms for how we ought to treat one another." An example of this in the sample Code on the previous page is: "We treat others as we would like to be treated ourselves." Many call this the "Golden Rule." This kind of statement is a "normative ethics standard." In other words, it tells us how we *should* act and how we *ought* to treat other people. Recent research indicates that the Golden Rule with all its variants may be the one universal norm, a global ethic that cuts across all religions and cultures. If an individual or the Council or a Commission were to become experts at just this one rule, it would change behavior and improve public trust dramatically.

The real problem with the example Code is that it didn't work. It belonged to Enron, the disgraced energy giant. Most likely it was the outcome of a day-long executive retreat, imposed by edict on people who had no hand in its creation and little need for it. These are typical problems for Ethics Codes at the 80% of organizations that have one.

Enron satisfies the requirements of a somewhat humorous button some readers may have seen in airport gift shops: **"If you can't be a good role model, at least be a horrible example everyone can learn from."**

By consistent inattention to small ethics maters, Enron's leadership did not notice when they crossed the line into illegal activity and beyond. Allegedly they waited to declare bankruptcy, until they could take care of their own private interests. Enron was $50 billion in debt by then, but they had managed to keep it hidden with the help of their accounting firm, Arthur Anderson, a venerable accounting firm who could not recover from this scandal. Employees reported being encouraged by executives to buy Enron stock while the executives were selling theirs. Enron executives allegedly under-funded the employee retirement funds by $125 million and caused investors to lose $40 billion in market share in the company.

3. Risks, Dangers, Stumbling Blocks, Threats

Beginning with his response to Milpitas' RFP, through the Code Development in March and at various times since then, Dr. Shanks has raised the risks, potential dangers, stumbling blocks, and possible threats involved in a comprehensive ethics program. These arise from individuals, from the internal environment of the City, and from the external communities in which public officials move. Understanding the risks was an important goal for the *Stakeholder Report.* They were part of the *Code Plan*, shaped the *Implementation Plan*, and determined various activities in the *Scope of Work* since June. They were part of the discussion at all the trainings and a regular item for the Steering Committee. "Eyes wide open!" was the goal of this review, along with some confidence in the City's ability to anticipate and to build into the Program's structure enough capacity to respond appropriately to whatever risks might come its way.

It is wise now to review that list of risks. Many were anticipated in program design. A few continue to pose real challenges to the future of the program and require purposeful action to reduce or remove the danger they pose to the City. These are discussed later in this report.

As at Enron, values codes always run the risk of:

a. never becoming real for the decision-maker or not being given the time to do that
b. never being integrated into the culture of the organization, i.e., not becoming part of the real way work gets done in the organization
c. not being taken seriously by top leadership
d. people whose behavior has the most negative impact on the culture fall outside the jurisdiction of the code
e. no consequence for ignoring the Code or conducting bad business as usual.

Even when an organization develops a values code in good faith, the Code is allowed to become ineffective. When that happens, it is usually the result of one or more of these problems:

1. **The language problem:** The Code is written in vague "values language" and no one sees the relationship between the values and the jobs they do on a daily basis.

2. **The "victim of myths" problem:** The program disappears in the "myths" or as a result of poor training. Here are some of those myths or issues:

   a. Everyone believes that they are "ethical" but everyone else's ethics could be stronger. They need the program, not me.
   b. Ethics is just about common sense, or law, or religion;
   c. Oh, and I learned it all in kindergarten;
   d. Ethics is an "add-on" program with little value to what we do everyday;
   e. Ethics is just the management fad of the week and if we hang tough, we can outlast it or the people who have pushed it.
   f. Politicians and their consultants are exempt from the ethics we would expect of any human being.

3. **The "once is enough" problem:** People receive a one-time training in the Code, never to discuss it again or to see their leadership raising the issues the Code discussed, or making any connection between the Code and the public official's own behavior. Some people who believe "ethics has no chance" or "the Council isn't serious about this" don't attend the training.

4. **The "too abstract" problem:** Except for decision-making, ethics is often presented as an abstract science, with no skills connected with it; if there are skills, they should be able to be learned in 20 minutes.

5. **The "hypothetical-hypothetical" problem:** Even ethical decision-making seems impractical, applying only to "Andes Mountain" type problems (e.g., Who would I eat first if my plane crashed and I was trapped on a mountain top in Chile during the longest winter in recorded history?). Rarely are "everyday ethics" dilemmas discussed. (Do I say what I really think about that issue when I know that powerful person over there disagrees with me—and I need their support on a project I really care about?)

6. **The "right vs. right" problem**: Ethics is sometimes approached as if there are no absolute standards or ethical truths to fall back on, as if everything is relative and any decision could be justified as an "ethical decision." This often happens because people are not given enough training to recognize and respond to situations in which two good things are in conflict and we can only choose one: Some current examples: improve schools vs. keeping the taxes lower; having to choose between loyalty and compassion. (The variation is having to choose between two wrong things, and you must choose the lesser of the two evils.)

7. **The accountability problem:** Accountability sounds great—until a leader finds him or herself being asked to explain themselves or being held accountable; much worse if politics appears to be the principal motivation for the complaint.

8. **The "Texas two-step" problem**: if you hold me to the Code, I get someone else to do the dirty work; if you hold them to the Code, they get someone else to do their dirty work.

9. **The "resistance to change" problem**: It's hard for anyone to change. It's especially difficult to admit to oneself or to others that we made a mistake, dropped the ball, fell over a stumbling block, should have seen it coming and didn't. It's many times harder to change a culture. Some organizations or individuals start down an ethics path and then discover that this is much harder, personally threatening, more time-consuming or costly, or a lot more difficult than they thought it would be.

10. **The "people don't care" problem**: Some people involved with politics will appear ethical when they know people are watching. They know that, whether for lack of time or interest, there will come a time when people won't be watching anymore, and then things can "go back to normal."

11. **The "ethics code is the problem" problem**: Once the ethics program is in place and is meeting any of the previous problems, but most often problem 9 (resistance to change), someone advances the notion that the ethics program is the problem. This can take many different forms:

    a. "We didn't have these problems before the ethics program got here."
    b. "People were happy before, now there's just conflict."
    c. "The ethics program is being manipulated for political purposes."
    d. "Why are we spending money on something people already know how to do?"
    e. "This is taking a lot of time away from important projects."
    f. "We had the worst campaign in 50 years—after the ethics program started. Did that just make it worse?"
    g. "That person or that group is never going to change. We're wasting our time."
    h. "The ethics program is making it worse for good people around here because you've taken away our tools for self-defense."
    i. "The consultant isn't neutral."
    j. "The program can't win against _____, (fill in a name, or a trend, or a group, or whoever you consider the problem to be.) So let's just give up. It was a good try. It didn't work."

4. Consistent Main Messages about the Program's Overall Approach

The World Wide Web made it possible for Milpitas to draw on the experiences of Enron, other good and bad company experiences, as well as the best practices from other cities, counties, and countries with successful and unsuccessful programs. (For instance, Canada reoriented its entire public service around core ethics and values a few years ago. All their experience and materials were available and used in the Milpitas program's design.)

As a result, the program's design anticipated many of the problems above and built in safeguards or counter-measures. In addition, Dr. Shanks articulated early and often these main messages:

1. At its meeting on March 18, 2004, the Council gave its unanimous approval and support to a set of decision points about the *Code* the City has now developed. (See number 8 below.) As a result of this public action, everyone invited to participate in the Code Development process, as well as the entire population of Milpitas through the Ethics First materials distributed in the City Newsletter in October, 2004, was told:

   a. The Milpitas *Code* from the start was being built to make a real difference in the life of the City. It was not going to go away after a year.
   b. Average citizens would be able to see and hear their leadership attending to the City's core values because leaders would be working hard to role model the *Code of Ethics.*
   c. Leadership from the top of the organization is the single-most important success factor for Ethics Codes. *Ethical Leadership* needs to be consistent, demonstrated, and clearly communicated. Through most of this program year, the Council as a whole worked very hard to live up to this leadership challenge.

2. Weak commitment at the top, stopping a program after its first year, or having the program make no visible difference in a political campaign (for example) –all would do more damage to public trust than not starting with a program at all because we would have given people hope that things would change, yet what they got was "business as usual."

3. The Ethics Program is the responsibility of all public officials; the decisions of each one contribute to Milpitas residents' perception that this is an ethical government, or not.

4. Ethical leadership takes effort, practice, and discussion during formal meetings.

5. The Ethics Program needs to become a regular part of the Milpitas culture and discussed as easily as the budget, city services, and anything else of critical importance to the City.

Consistent main messages, frequently repeated, and actions that follow-through on these messages and promises is a key way to respond to the problems mentioned above. This was part of the Program strategy and design. Milpitas has made an excellent start, but needs to reinforce these messages and work to make Program skills into habits for all public officials.

5. Listening Carefully to the Public; Speaking Openly to Council

Perhaps the most important factor shaping the Milpitas program to date and into the future is the active involvement of the Community Advisory Commission (CAC) and other citizens who

believe the City needs the Ethics Program, should give it time to grow, and should redouble efforts to make it so. Milpitas will resolve the problems it may now face if citizens continue to devote time and attention to the City's Ethics and other Programs. They need to match that with open communication to Council about citizens' need for ethical leadership and what, exactly, such leadership looks like.

The clear voice of the public in the development of the Ethics Program to date makes it unique in the nation. Citizens identified the need for the program, determined its goals and objectives, reached consensus during Code Development, served on the Steering Committee, and attended to current actions of the City Council, City Staff, and Commissions.

It has been a privilege and an inspiration to work with these citizens.

The CAC deserves special recognition: they identified the need for an ethics program after the negative political races in Milpitas in 2002, worked to gain Council approval to study ethics as part of the CAC's 2003 work plan (approved January 21, 2003) researched state-of-the-art city programs, attended many workshops in the City of Santa Clara, and presented a careful and well-researched plan to the City Council (September 2, 2003). This effort led to the unanimous approval of the City Council to hire a consultant (late January 2004) and develop a program.

The CAC also articulated the mission for the Ethics Program when they presented their recommendations to Council.

They said the mission was to "promote, through a program of ethics education and policy:

   a. Increased voter participation in elections
   b. Higher levels of public confidence in elected officials
   c. High standards of civic conduct."

Once the City decided to move ahead on their recommendations, citizens then focused their efforts on seeking consultants. Their dedication to the program is the main reason Dr. Shanks responded to Milpitas' RFP.

The dedication of citizens and the willingness of a number of them to donate many hours to the Ethics Program have been constant and unwavering. Forty-four stakeholders spent upwards of an hour in one-on-one interviews with Dr. Shanks to help him identify strengths, weaknesses, opportunities and threats facing the Ethics Program in Milpitas. Their voices can be read in the *Stakeholder Report*, available online.

Dr. Shanks strongly encourages all public officials and citizens to read that *Stakeholder Report*. The needs and desires of residents, their worries and concerns, hopes and dreams, and their fears about anticipated realities in Milpitas are all there.

Almost 300 other residents responded generously to the March 2004 Citizen Survey. They completed an important and complicated form giving input on public trust, core values that should be included in the *Code*, and their feedback on candidate behaviors during elections. Their opinions can be read in the recently released *Survey Report,* which will also be available on-line.

Many citizens attended and/or watched the workshop for candidates, the League of Women Voters Final Word, and the Post-election assessment.

City leadership needs to understand that there are now many champions for ethics among the public. The City should double its efforts to hear what citizens are saying they need from public officials.

Citizens, for their part, are encouraged to read the *Ethics Program Guidelines* (on-line search for "City of Milpitas Program Guidelines," available at http://www.ci.milpitas.ca.gov/ethics_1st/doc/guidelines.pdf.) There they are encouraged to become even more involved in the Ethics Program going forward, to thank elected and appointed representatives for their generous public service, and to hold them accountable for creating the kind of government Milpitas residents want.

This will take some effort and some continued organization and planning since the survey showed that residents pay attention first to improved services, then to cuts in service. Next, election politics demands attention, then candidates who break their promises to residents, and candidates who keep their promises. At the bottom of the attention scale are the actions of Council and Milpitas politics outside of election time.

President Franklin D. Roosevelt once said: "Let us never forget that government is ourselves and not an alien power over us. The ultimate rulers of our democracy are not a President and senators and congressmen and government officials, but the voters of this country."

6. Legal Limitations and Alternatives Open to Residents

Finally, citizens need to be aware of a legal limitation on the City that affects the Ethics Program during elections. The City is limited by law in its involvement with political races and politics. For example, city money can not be spent on political activities that support candidates. The City Attorney is as crucial a player in this as he monitors and interprets a growing body of law in this area.

This past year, for example, the City was extremely cautious in its involvement with the League of Women Voters' Final Word Forum, and only provided access to the City's facilities. Staff were not involved in planning or promoting this event. Dr. Shanks did no work on the Forum as part of his City contract.

Similarly, the City was cautious about the education outreach effort to voters and judged it prudent to scale back the voter outreach effort somewhat. The City did send the Ethics First brochure to every city household as part of the City Newsletter, recorded a public service announcement and played it on the website, directed people to the website for the Ethics Program Guidelines, and invited people to send an on-line postcard to the City Clerk saying that they would be paying attention to ethical campaigns this year.

Without survey data, it is difficult to tell whether the average voter was aware of the program, but Dr. Shanks' experience is that these efforts, which were exemplary for the first year of the program when the Program was trying to do so much, do not gain the attention of busy residents the first time around. So it is very possible that many residents were unaware of the City's ethics efforts during this campaign.

Given these problems and limitations, residents in some cities have explored other legal mechanisms to support high conduct during campaigns and to supplement what any City is able to do legally. At the Post-Election assessment someone suggested an "Ethics First" citizen group that operates independently of the City. This issue needs a great deal of study prior to embarking on it. Great care needs to be taken to be sure the ground rules and procedures of the group assure impeccable ethical conduct, rather than using ethics as a blunt political instrument. The group would need to be patterned much more after the non-partisan League of Women Voters' model than other possible models. Again, the world wide web has many resources available for grass-roots citizen groups.

7. What the People Want from Milpitas Public Officials

America at large has been experiencing a decline in public trust for government at federal, state, and local levels. Americans have increasing demands and increased expectations for public officials. One clear statement of those expectations is included in *Rebuilding Citizen-Government Relations for the 21st Century*:

> Americans want better performance from their government and their leaders. They want government that is more effective and responsive. They want leaders who are more ethical in their behavior, who care more about the public interest and less about their own careers and the few big interests whom many Americans think they are most responsive to now.

Milpitas shares some, but not all, of those concerns. Much closer to what Dr. Shanks heard this year from residents is what Jim Wallis describes in *The Soul of Politics*:

> We've all seen how politics can reflect our worst values of selfishness, greed, divisiveness, fear, and power. Yet we long to see how politics could reflect our best values of compassion, community, diversity, hope, and service. Reconnecting politics to our best values is now the most important task of political life (p. 18).

Infusing the best values of Milpitas into its public life, especially during campaigns, is important to the people of Milpitas who spoke with Dr. Shanks. He heard clearly from the 40 or so people who attended the Post-Election assessment of their dismay at what some described as "the worst campaign in 50 years." Some were confused by what they perceived as increased political activity by the employee unions; two were frightened that there might be reduced services if they voted one way or the other.

This is anecdotal evidence and may represent just those few individuals. Additional scientific research is advised. If even one or two individuals misunderstood the communications with the employee unions and altered the way they voted or didn't vote at all, or felt that somehow their safety services would be compromised, a very clear message needs to go to citizens.

Since that was certainly not the intent of the employee unions, they could consider which communications with which people might have been misunderstood and take reasonable steps to prevent even the possibility of such a miscommunication in the future.

What ethics do citizens want from public officials? One finding from the *Survey Report* needs to be mentioned. The survey, as well as the public meetings, gave respondents 25 statements of possible values to include in the *Code of Ethics* the City was about to write. Respondents were

asked to provide feedback about these value statements through two different questions, but the results were the same.

The top five values identified by Milpitas citizens as necessary to include in the *Code* were: responsibility, honesty, integrity, dependability, and accountability.
If we look at the statements they were rating, we gain additional insight:

1. **Responsibility**: I take responsibility for my actions, even when it is uncomfortable or unpopular to do so.

2. **Honesty.** I am honest and tell the truth to citizens, colleagues, and staff.

3. **Dependability.** I am dependable and do what I say I will do.

4. **Accountability.** I am accountable, willing to explain my actions, and ready to accept fair consequences, agreed to in advance, when I bump into a stumbling block and don't live up to our Code.

5. **Integrity.** I act with integrity, and seek to do the right thing for the city especially when no one is looking.

In many cities, when the word "ethics" is mentioned, what citizens usually raise concerns about is "fairness," "due process," "conflict of interest," and "independence of judgment." In one local city, of the five stipulations in their ethics section, three deal with fairness issues. Yet, fairness and respect were not initially among the top five values in Milpitas.

Of course, all of ethics focuses on relationships and how people ought to be treated. Yet fairness and respect can be looked at as primarily *other-directed*, seeking in the case of respect to protect the other person's right to be treated with dignity or in the case of fairness, to assure others receive benefits and burdens equitably.

Responsibility, accountability, integrity, honesty, and dependability all have an other-directed component to them, but they focus more on the strength of a person's own character, are more about oneself than about others, and are more fundamental and basic. They focus more on the state of my character rather than the correct treatment of others. Milpitas residents first need public officials who have strong traits of personal character: they show up, stand behind their actions, keep their promises, do the right thing, tell the truth, explain their reasoning, and admit when they make a mistake.

8. Council Consensus

By March 10, 2004, data gathering was complete and the results analyzed, citizen feedback had taken place and the Program Steering Committee had been meeting and discussing many issues. Dr. Shanks was now at the point of being able to propose to the Council a set of decision points that would guide the specific writing of the *Code* and the overall approach to its implementation.

The Council considered these points at its meeting of March 18, 2004. After discussion, Council voted unanimously to accept all the decision points. As a result, Milpitas developed a *Code* with these characteristics:

1. The Nature of the Code

The *Code* is meant to be a guide for everyday actions and decision making. It is a living document, translated into everyday actions by those who practice it. In adopting it, the City (and all whom the *Code* covers) promises citizens that they will do their best...
- a. to practice its principles every day,
- b. to be guided by it in decision-making, and
- c. to be held accountable to its standards.

If it is to remain a living document and integrated into the decision-making of the City, its effectiveness will need to be monitored and the *Code* itself updated according to a regular schedule to reflect changing needs in the City.

2. Bound by the Code

Those bound by Code include:
- a. the City Council,
- b. Board and Commission Members,
- c. others appointed by the Council,
- d. candidates running for office and the
- e. City Manager and Senior Staff.

3. The Leadership of the Ethics Program

The leadership of the program rests with the City Council and with the City Manager.

4. Leadership Commitments

The City Council and the City Manager commit themselves to "setting the bar for ethical conduct as high as possible." The City Council and City Manager, as individuals and as a group, commit to:

a.) working hard to develop and maintain reputations for integrity and ethical leadership;
b.) striving to make the *Code*'s values and principles real in their everyday work by translating those principles into specific *Behavioral Standards* for their jobs, as appropriate;
c.) working to remove any stumbling blocks that get in the way; and
d.) demonstrating public commitment to the *Code* and the program
  - i. by using it as a guide for policy and decision-making,
  - ii. by allocating resources as necessary and prudent,
  - iii. by exercising oversight over the program, and
  - iv. by demonstrating a willingness, as appropriate, to explain the values and ethics reasoning behind important decisions.

5. Content of the Code

The *Code* will be one positive set of statements that describe us at our best and describe how we ought to treat residents and other City leaders; will name core ethical values and a set of behaviors specific enough so that it is clear to readers what that value looks like in practice. In developing its content, those drafting the *Code* would give careful consideration to the results of the Citizen Survey and to the Stakeholder report.

6. Development of the Code

The *Code* will be developed collaboratively and over four sessions. Dr. Shanks would work with staff on the final wording of the document after specific input from working groups during the sessions. The sessions will have representatives (included in report) or with mutually agreeable changes.

7. Accountability and Implementation

The program is intended to be a positive program, but it will require a clear accountability process. Those involved in drafting the *Code* should be asked for input and feedback during the last session. We further propose that we discuss an appropriate process for developing an Accountability System with the Steering Committee and return at a later date for approval of that development process. Similarly, we propose to return to Council at a later date to outline and gain approval for the full implementation plan.

9. The Code of Ethics and the Behavioral Standards

What residents want from their public officials, of course, is what is described in the final version of the *Code of Ethics* and the *Behavioral Standards*, approved by the Council unanimously on June 1, 2004.

On that day, the Council approved two documents that had been developed over four, two-hour meetings beginning on March 31, 2004 and ending on May 5, 2004. A total of 171 persons representing the public, city Boards and Commissions, city management, and city staff contributed to these documents. Throughout the process, all participants knew that the City was working toward a consensus document and revisions were taken in that spirit. Everyone in attendance on May 5, 2004 was asked to signify that they could live with and support every word in the documents. If not, the consultant would continue to work on the documents. With some adjustments, every person voted by consensus that this document was one they could support.

The Code Development Process resulted in:

a. Naming of six preferred City core values (or value clusters) answering the question, When public officials in Milpitas are *at their best* in their treatment of residents and other public officials, what core values characterize them?

b. The answer was: honesty, fairness, respect, teamwork, stewardship, and accountability.

c. These values were judged so fundamental to public trust that the City made it a moral obligation for all candidates and public officials to act according to these values.

d. In addition to the value name, each value includes a description, which focuses on the character traits residents can expect to see in someone practicing each value. The values with their descriptions is what we refer to as *The Code of Ethics*.

e. In addition, a set of *Behavioral Standards* was developed for each value, with behaviors specified for public officials and another set for candidates for office.

f. These Behavioral Standards "provide specific examples of everyday actions and decisions which are consistent with the *Code* and examples of behaviors which are not. This list seeks to describe enough positive and negative behaviors that a reasonable person will be able to judge whether their own behavior is consistent with the Code of Ethics or needs to be modified."

This whole package was discussed by Council on June 1, 2004. In addition, Council also approved a 14 point implementation plan called "Make It Real." Among the stipulations of the approving resolution were two that deserve special notice:

> Whereas the people of Milpitas expect all campaign candidates, elected and appointed officials, City Management and senior staff to implement this *Code* as it applies to their work and to be role models, meeting the most demanding ethical standards, demonstrating in word and action that they are living Milpitas' values in best practice,
>
> Now, therefore, be it resolved that the City of Milpitas has adopted this *Code of Ethics* and *Behavioral Standards* to foster public trust and public confidence by promoting and maintaining the highest standards of conduct...

Council passed this motion unanimously. Council also passed Standard Operating Procedure No. 16-01 retitling the *Code of Ethics* (adopted since 1976) to the *Code of Conduct for Public Officials.* This document forbids gifts of any kind, specifies procedures for conflict of interest, bans unilateral communication, and so on. All public officials are advised to read this document in tandem with the new *Code of Ethics.*

10. Make It Real

From June 2004 until January 18, 2005, the Ethics Program and Dr. Shanks were involved in completing the activities Council approved as the *Implementation Plan* and the more specific *Scope of Work.* Among the implementation activities Dr. Shanks was engaged in were the following:

- Two training workshops for Council.
- Two training workshops for Senior Staff (with make-up workshops for each).
- One workshop for Commissioners (with one make-up sessions).
- One workshop for liaisons (with one make-up session).
- One workshop for candidates (100% attendance).
- Discussion with Chamber of Commerce about the Candidate Forum.
- Post-election assessment town hall meeting.
- Researched, proposed and drafted (with City Attorney) ordinance for Council approval of the 3 person Ethics Evaluation Panel (which Council supported 4-1).
- Identified potential Ethics Evaluators. Interviewed and presented candidates to Council for approval - 3 Evaluators and an alternate as a backup. Candidates were approved unanimously by Council.
- Conducted two training sessions for the Ethics Evaluators on the new *Code* and Guidelines for candidates.
- Researched and contributed written pieces to the Ethics Program Guidelines for posting on the web.
- Recorded a public service announcement for the Ethics First and Measure Up! public information pieces for playing on the web site.

- Alerted the County Ethics Foundation to the new *Code* in Milpitas. Invited candidates to let the City's *Code* supersede the County Ethics Foundation.
- Drafted training case studies for all workshops.
- Drafted additional training materials for Moments of Reflection, Communicating Ethics, the Decision-Making Pocket Card.
- Drafted survey for Recognition data from Commissions; drafted document describing the concept of the culture of recognition, including how to identify someone or some group who made extraordinary contributions to the Ethics Program.
- Developed initial documents for a partners program, but this program was postponed.
- Formal observation of two Council meetings with feedback.
- Formal observation of two Senior Staff meetings.
- Developed final citizen survey (not approved by Council).
- Researched lobbyist registries in other cities, developed list of best practices, drafted model lobbyist registry ordinance with City Attorney (not approved by Council).
- Developed third training workshop for new Council (not approved by Council).
- Meetings with staff and Steering Committee.

These activities were undertaken to advance the goal of the *Code of Ethics* and the *Behavioral Standards*: fostering public trust. This statement from the Council on Excellence in Government has gained the approval of 500 former high level government employees. It describes well the close relationship between ethics and public service.

> "Public service is a public trust. The highest obligation of every individual in government is to fulfill that trust. Each person who undertakes the public trust makes two paramount commitments:
>
> - to serve the public interest; and
> - to perform with integrity.
>
> These are the commitments implicit in all public service. In addition to faithful adherence to the ethical principles enjoined upon all honest and decent people, public employees have a duty to discern, understand, and meet the needs of their fellow citizens. That is, after all, the definition of a public servant."
>
> --from the Council on Excellence in Government, 1992

11. Personal Comments: Milpitas' Ethics Program is a National Model

Where is the City today?

The Milpitas program is already a national model for many reasons:
1. The City created a values-based Ethics *Code* through an extensive public process involving all stakeholders.
2. The Behavioral Standards document sets a new threshold for cities with Ethics Codes. The Ethics Evaluation Panel has been able to show the resiliency and power of these standards. For every complaint the Evaluators have received, they have found direct guidance in the Code of Ethics and Behavioral Standards.

3. The Ethics Accountability Process has independent authority, which citizens and Council both appreciated. It has a budget and has attracted an independent and experienced Panel of evaluators who have praised the City's ethics effort each time they have met. Its procedures require quick resolution to ethics complaints, so everyone can resolve the problem and move on, or resolve that there was no violation of the *Code* and move on. It is in place now and will be in place before, during, and after the next election. The presence of that panel, as well as other efforts at campaign ethics, should improve campaigning dramatically.
4. The City has just begun to develop a positive recognition culture, another best practice for ethics programs. Positive recognition and thanks for exceeding the demands of the City's values does more in the long run to encourage participation and ethical behavior than any accountability program can. Nevertheless, in the short term, accountability is crucial to changing the culture.
5. The City recognized that ethical campaigns and candidates were central to the future of public trust and integrated training for candidates into the *Code*. Training included meetings before (the Campaign Workshop), during (The Final Word Forum), and after (the Post-Election Assessment Town Hall meeting).
6. The effort to do outreach to citizens began and some excellent materials were developed and distributed. This, again, was a beginning.
7. A Steering Committee of senior staff and CAC members guided the Program and the work of the consultant. The combination of staff and citizens is very useful in the development of effective programming.
8. The involvement of the public also helps to make this a project that has gained attention. Its inspiration and most of the work on it came from the public, rather than from the Council or senior staff. As the *Mercury News* pointed out early on, Milpitas developed its program before there was a scandal and through an open and broad public process. Milpitas "did it right," the *Mercury News* wrote. The *Mercury News* also applauded Milpitas for the Final Word Forum - again a first in the nation.

The Institute for Local Self-Government of the League of California Cities and the Small Cities Association agree that Milpitas is a model. Both have featured the Milpitas Ethics Program in their publications. Small Cities identified Milpitas as a "best practice" case study and the Institute continues to feature Milpitas on its website. It directs web visitors to the Milpitas Ethics First website, where Milpitas has done a remarkable service for all other cities by posting all the documents, as well as the details of the Code development process and the dispositions of the Evaluation Panel.

As a result of this kind of recognition, the Program Manager was invited to present the Milpitas Community Ethics Program at the Annual Convention of COGEL - The Council on Governmental Ethics Laws, a professional organization for government agencies, organizations, and individuals with responsibilities or interests in governmental ethics, elections, campaign finance, lobby laws and freedom of information. Her presentation in San Francisco during the winter was extremely well-received.

The program manager deserves the thanks of the Council and the City for the amount of effort put into this program and for the quality of the results. She was an excellent spokesperson for the Program at all times. She also made sure that City staff had no role in any ethics program that could be seen as involving them in politics. She made sure that no Committee member asked the consultant to change a substantive point that he had already decided to include in any report presented to the Council or created as part of this Program. This Program could not have

had a more professional, efficient, cost-effective program manager. In addition, she did all that while also serving the City as the Acting Planning and Neighborhood Services Director.

These are the kinds of people, headlines and recognition the people of Milpitas, as well as the Council, deserve and should be proud of.

12. Open Government and Ethics

The City should also be proud of a related effort, not part of the Ethics Program that is the Open Government Ordinance discussed at the City Council meeting on Tuesday, February 15, 2005. That night, the Council decided to move ahead with an Open Government Ordinance, drafted by Council member Gomez, that raises the bar on such ordinances and is likely to become a state-wide model for transparency and ethics in local government. Listening to the Council discussion and reading the draft ordinance, anyone familiar with the City's ethics program would have to be struck by the close relationship and potential synergy between the two programs. They go together hand in glove.

Each makes the other ordinance stronger than it would be on its own. Without a commitment to ethical leadership, how likely is a truly transparent and open government? Without the procedures for open government, how possible is ethical leadership? Together, the impact on public trust, which is an ultimate goal of each program, will be considerably greater than either could produce by itself. The two send different, yet mutually reinforcing, messages to residents.

The Milpitas Open Government Ordinance is built on the fundamental mission for Milpitas and all government: "Government's duty is to serve the public, reaching its decisions in full view of the public." It provides public officials with the training they need to understand the critical importance of transparency, and a governing board to further develop the ordinance and assure accountability for those bound to uphold it.

Similarly, the Ethics Program was developed to support the City's mission to serve the public. That mission is *what* the City does. The Code of Ethics describes *how* the City wants its leadership to accomplish that mission. The program in Milpitas is unique because from the start it has been driven by the public. That public, including Commissioners and almost 300 residents who responded to the City's March 2004 survey, joined with City staff to reach consensus on the character traits and behaviors that should characterize public service in Milpitas. As with the proposed Open Government Ordinance, the City provided initial training in applying the *Code* to the regular job of the public official, and the City also developed an accountability mechanism.

13. Do Residents Have a Right to Ethical Leadership?

The Open Government Ordinance and the Ethics Program are also both focused on protecting fundamental rights that residents have and which government is duty-bound to protect: "The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information" *(from the first draft of the Open Government Ordinance)*.

That right to Open Government is clear, but do residents also have a right to "ethical leadership"?

The *Preamble* to the Code of Ethics helps us to define "ethical leaders" as those who are "credible role models" of the City's Ethics *Code* and who "demonstrate in word and action (their) deepest commitment to the City's values in best practice," who "master the fundamental practices described in the Code, (and) meet the most demanding ethical standards." Do residents have the right to such leadership? Further, as with the right to open government, do residents have the right to hold leadership accountable to the high standards of civic conduct embodied in the Ethics Program and re-enforced by the Ethics Evaluation Panel?

These are key questions that all must answer as the current Council evaluates and addresses the future of the Milpitas Ethics Program, the Code of Ethics, and the Ethics Evaluation Panel. If the answer is "yes, citizens have such rights," then it is important to remember that such a right brings with it a *duty* for elected and appointed officials to protect and advance that right. *Protecting and advancing the fundamental rights of citizens is the reason for raising the bar in both the Open Government Ordinance and with the Code of Ethics.*

14. Ethical Leadership is a Prerequisite for Public Trust

If people have the right to ethical leadership, it is because such leadership is critical to public trust; and public trust is a necessary condition for the Council's legitimate authority to govern. The Open Government Ordinance reminds us, "The people do not cede...the right to decide what the people should know about the operations of local government." At the same time, however, the public does empower its representatives with the authority to operate on its behalf because the public trusts that these officials will operate solely in the interests of the community.

Research is clear that public trust increases when residents experience honest, fair, and respectful leadership-in-action, when leaders work collaboratively and effectively in teams to be good stewards of the City's resources, and when leaders allow themselves to be held accountable to the voters who elect them.

The close relationship between public trust and the six values of the Milpitas Code of Ethics led to a *core concept* for the Ethics Program and a key point that has been made in the trainings conducted so far: The City's six core values are so fundamental to public trust and good government that the City has made them into a Code of Ethics and imposed a moral obligation on public officials to be role models for these values.

Ethical leadership--along with excellent public policy, customer service, problem-solving, civility, conflict resolution, and a few other key leadership capacities—is indispensable to public trust.

15. Council Actions and Fostering Public Trust

"Fostering public trust" is the stated goal of the Ethics Program because public trust is fundamental to democracy. No elected official is able to govern effectively without that trust. Here is the way *Newsweek International* described the importance of public trust in July, 2004:

> Democracy is the most delicate of political systems. Kings had divine right. Tyrants use force. But the authority of democratically elected leaders draws on nothing more substantial than a contract with the people: legitimacy hangs from a single skein of public trust. That trust cannot be obtained by force or mandated by law. It is an unmatched

power source—politicians whom people trust can do almost anything—and the indispensable attribute of a democratic political culture. Without trust, democracy dies.

Right now citizens may find themselves confused by Council's actions on January 18, 2005 a month before the open government discussion. On January 18th, Council did not support three ethics-related items concerning training, the final citizen survey, and the lobbyist registry. Given the great potential for confusion and attribution of Council motives when it votes on important actions, Dr. Shanks encourages the Council to consider addressing the questions on the Milpitas Pocket Card: How do these decisions advance the City's Core Values? Why was this the ethical thing to do?

This is a good faith suggestion asking Council to use the opportunity of important votes to educate residents about how you are using the Ethics Code guidelines. Council clearly has well-considered reasons for its positions, but what the residents hear are just a few sentences or words explaining your reasoning. That can lead to confusion and unnecessarily put public trust at risk.

RECOMMENDATION #1

The first recommendation of this report is that Council extend the time it spends sharing its reasoning with citizens, specifically consider the pocket card, and focuses on educating citizens about the way the Council thinks through important votes.

For some specific suggestions, see Section 20.

The *Program Guidelines* to Ethics First, available to residents on the City's web site since October 2004, describes what a City commitment to ethics means for residents:

"The Milpitas Ethics Program sees the challenge of implementing the new *Code* as one of putting ethics at the center of our community—in how elected officials meet their responsibilities to the citizens, how businesses work in the city, how we envision and plan our future, how citizens treat one another in public forums, how we air and resolve differences. 'The Ethics *Code* is dynamic,' said one citizen and CAC member who participated in its development. 'It calls individuals to be at their best; and when that happens, when individuals treat one another ethically, the Milpitas community grows, it thrives."

Action on this report presents another opportunity for Council to educate voters on ethics.

16. The Independence and Neutrality of Ethics and the Ethics Program

Given the suggestion just made, this is an important topic to raise now. In presenting the Ethics Program to citizens, great care was taken to communicate that the Ethics Program is not a political program; it does not belong to any culture or power in the City. Rather, ethics belongs to every human being of whatever background and political persuasion, who is working to do the right thing and to serve the common good. Ethics standards apply to everyone equally. Because every human being stumbles and falls from time to time, we would expect that everyone would be held accountable equally, just as they should be recognized and applauded equally. When someone is held accountable under the Ethics Program by the Ethics Evaluation Panel, the judgment of the Evaluators has nothing to do with Milpitas politics.

Over the past year, the Ethics Evaluators, as well as the Ethics Consultant, have worked hard to be independent and neutral third parties, unaligned with any political party or power, asking challenging questions, calling things honestly and the way they see them, and offering their best advice to Council and the City. The evaluators and the consultant do not live or have a business in Milpitas, do not vote in Milpitas elections or support or endorse anyone in those elections. They do not attend social events in the City. They only advocate for ethics and the value of ethical leadership.

Can anyone do this perfectly? No. The reason for ethics conversations in public settings is that sometimes even ethics consultants don't see the forest for the trees. For example, as Dr. Shanks thought about Council discussion about the final ethics survey, he would agree with Council member Gomez' comments about the question that asked about the influence of specific campaign materials. Some additional choices needed to be added to make the question more inclusive. All ads that addressed other candidates should have been on the list. This is a reason we pretest surveys with various audiences. With his frame of reference, Council member Gomez saw the problem with the question right away, a problem that the consultant, with his frame of reference, would most likely never have seen. But this was a frame of reference problem, not a problem of political bias.

In general, the fact that election campaigns in Milpitas are so intense and partisan has led to a recurring stumbling block for the Ethics Program and the Milpitas culture: everyone seems to be certain of everyone else's motivation; we assume everything is politically motivated; and we assume the worst. This is especially the case if someone is critical of someone else, supports someone else or does not support me.

17. Supporting a Non-Partisan, Non-Political Ethics Program

The Milpitas Community Ethics Program, like every other service the City provides, is non-political and non-partisan. It applies its praise and its criticism to everyone equally regardless of position or power. While it is possible that someone could use the program for political gain or to unfairly attack an opponent, the Code of Ethics makes that very behavior a violation of the Code. It is within the jurisdiction of the Ethics Evaluation Panel to hold someone in violation of the Code for bringing an unfair ethics complaint against someone else.

Because of this, independence and neutrality were "baked" into the Ethics Program from the start in order to make it possible for any Council majority to support it, and for the Ethics Program, like City services, to continue through election cycles and changes in the Council over the years. As this is the first time the Council has changed since the establishment of the Ethics Program, it is important to establish the precedent that the Ethics Program, perhaps unlike other programs, is non-partisan and is deserving of support from all sides. The Ethics Program does not exist because of one Council majority or another. It exists because the people of Milpitas wanted it and need it to be sure that theirs is a government of the people and that their leaders are promoting and maintaining the highest ethical standards.

For this reason, at the last Code Development Workshop, everyone present was asked if they could support every word in the Code and the Behavioral Standards. If not, the group would continue to work until there was consensus. After some additional work, everyone in the room stood up. The City had consensus on its core values. It was clear to everyone that honesty, respect, fairness, and so on are not partisan or political. They are human, universal standards, and foundations for public trust.

This is an important point to make, because people in Milpitas are talking about whether the Ethics Program will continue and whether this Council will continue it. These questions are understandable, but perplexing since a unanimous Council approved the Ethics Program every step of the way, with the one exception of a 4-1 vote to establish the Ethics Evaluators. In the June 2004 Scope of Work, the consultant advised the Council: "It is also critical to the implementation for everyone to know up-front that the Code of Ethics will not go away after this initial year. Ethics programs succeed when the organization is committed to the program over the long-haul. People take the Code seriously when they are convinced it is not a fad or a program we 'did last year.' Rather, the Milpitas Ethics Program needs to develop into a sustainable program using the same mechanisms and processes the City uses with all its other essential, sustainable programs.

18. The Promises Made by Ethical Leaders

The *Ethics First Program Guidelines* assumed that the City had already made a commitment to the Ethics Program. It promised residents: "when it comes to ethics, they (City leaders) are going to walk the talk. They promise their decisions and behavior will at all times—even when nobody is watching—be at their best, i.e., consistent with the *Code*'s values. Public officials are thus accountable both to the *Code* and to City residents. Residents need to help public officials keep their promise."

Why do public officials need help?[1]

Ethics is sometimes thought of as "obedience to the unenforceable." No code of ethics and no accountability system can make a public official ethical who does not choose to put the interests of the community above his/her own self interests or to care how others are treated. No code of ethics can describe every situation where a public official needs to make a choice between right and wrong, or the more difficult choice between two good things. Especially, no accountability system can compel a public official to act ethically in private and when no one is watching.

At those times, the public must rely on the integrity, courage, honesty, and trustworthiness—in other words, must rely on the ethics of those individuals who have stepped forward to serve this community. Because the public must trust its leaders, John Adams, the second U.S. President, one of the founders of this country, said, "The people have a right, an indisputable, unalienable, indefeasible, divine right to that most dreaded and envied kind of knowledge – I mean of the character and conduct of their rulers."

When the City began the implementation program for the *Code of Ethics* in summer 2004, the Milpitas community asked each public official to adopt a fundamental option to act ethically and for the common good in public and in private, and also to be credible role models for the City's core values.

One small, but important symbol of this involved signing the Code of Ethics and returning that signed Code to the City Clerk. This symbol was explained during the training sessions for Council, Commissioners, and senior staff. Many public officials in Milpitas—most City staff, about half of the Commissioners, and almost all of the Council--responded by signing the *Code* acknowledging that they had read it and understood its expectations.

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[1] The next section is taken from the *Scope of Work* (June 24, 2004)

The community asked for this largely symbolic gesture from all public officials because of the nature of public trust and government ethics. Public trust and an ethical culture are both built decision by decision, right action by right action, trustworthy behavior after trustworthy behavior. When it comes to building an ethical culture, **every** decision with an ethical component to it, made by **any** public official either builds the ethical culture of the whole organization or weakens it. One ethically-inappropriate or ethically-questionable decision is not "balanced out" by one ethical decision. Public trust is fragile. It takes a long time to build, but very little time to be weakened or fatally damaged. Ethical action is the best answer to those in Milpitas who are skeptical of Milpitas' commitment to this program or its possibility for success. At the very least, the Program should be able to point to 100% of those bound by the *Code* having read it and signed it.

RECOMMENDATION #2

**This report's second recommendation is, at the earliest possible time, to:**

1. **schedule an additional training session for the remaining Commissioners;**
2. **extend invitations for attendance through whatever is judged the most effective way to reach Commissioners (personal invitations from the Council, letter from the Mayor, etc.); and**
3. **make every effort to gain 100% success at signing the Code among all stakeholder groups, acknowledging only that Code has been read and understood.**

19. The Need for the Program: Fostering Public Trust and Confidence

This report has already discussed the relationship between the Ethics Program, Ethical Leadership and Public Trust.

What is the status of public trust right now? The full report of the March 2004 citizen survey provides full information, but for our purposes, let us consider a few charts.

Do citizens trust the Council to represent their interests? We see about 28% of respondents in the 4 and 5 category, trusting the Council very much. We see about 25% on the other side, distrusting Council very much. Just slightly less than 50% give the middle rating of 3. We see virtually the same percentages in the question on how much trust Citizens have that they would be treated fairly by the Council if they brought a problem to the Council.

COUNCIL: trust to represent your interests

COUNCIL: treat you fairly?
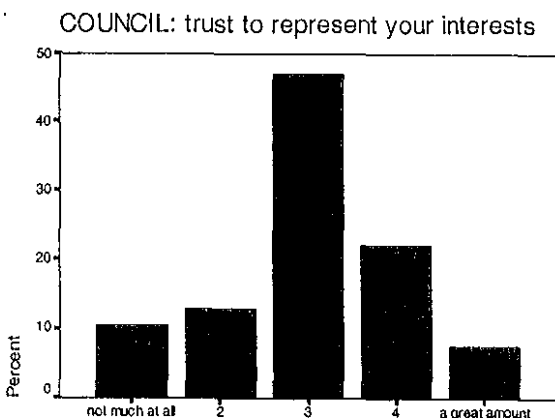
COUNCIL: trust to represent your interests
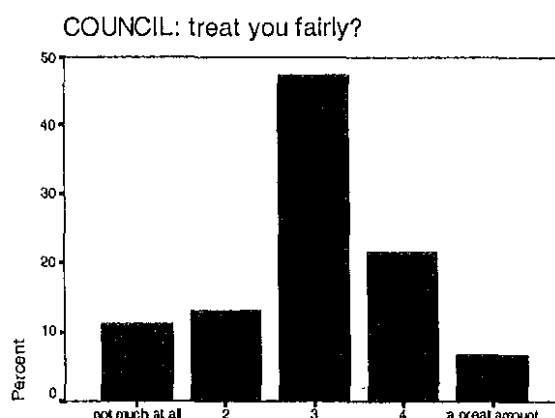
COUNCIL: treat you fairly?

On the next page are found the results for the two questions on whether the Council was trusted to do the right thing in public and in private. The Council's integrity is a key element in public

trust. The results show about the same numbers as the previous questions above. 34% give the Council a 4 (24%) or a 5 (10%), indicating that they trust the Council to do the right thing in public. This number drops to 24% (15% give a 4 and 9% a 5) who trust the Council to do the right thing in private. 23% (9% a 1 and 14% a 2) have little trust that the Council will do the right thing in public. 30% (13% a 1 and 17% a 2) have little trust the Council will do the right thing in private.

COUNCIL: do right thing in public

COUNCIL: do the right thing in private
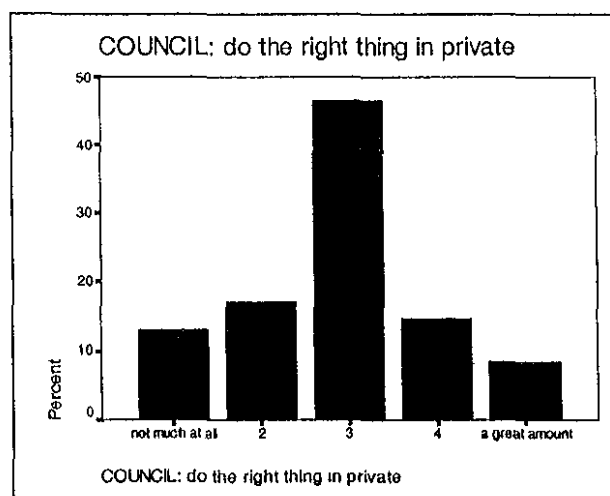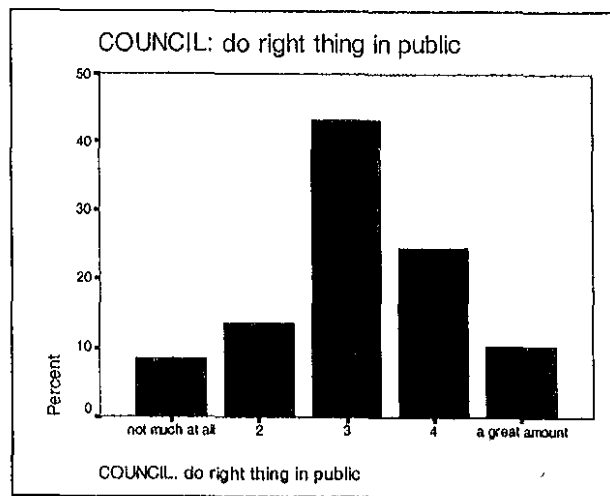
As most of these people have little personal contact with the Council, these are perceptions.

We see a jump in the number of people who have confidence in City services with more than 50% rating their confidence at a 4 or 5, but still large numbers of 3's. We see about 40% rating the staff highly on the integrity issue, but an increase in the numbers who rate the staff low on integrity.

STAFF: confidence in quality of services

STAFF: do the right thing
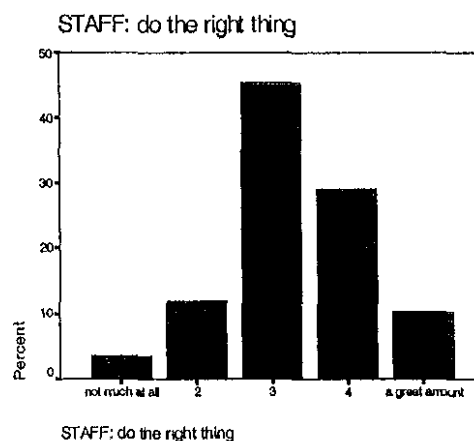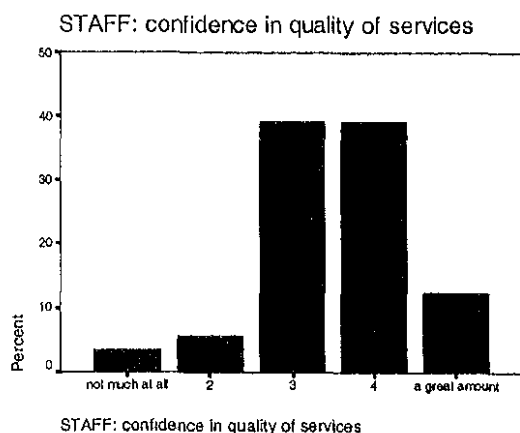
It is important to note that the levels of trust for the Council are not the same as in most other U.S. cities. Research conducted by the Kaiser Family Foundation in 2000 on a national sample shows that 40-50% of respondents typically rate their local governments at the highest levels; this is 10-15% higher than the ratings in Milpitas for the Council that was sitting in March, 2004.

These ratings suggest that Council consider the opportunity each televised Council meeting presents to build or weaken public trust, and to role model for the Commissions and the senior staff. This section gives a concrete example of how the recommendation in Section 15 could play out to give everyone a win-win.

As an example: No Council member offered any comments during the moment of ethics reflection at the start of the meeting on February 15, 2005, and this has been true for some weeks. This brief period in the agenda is an opportunity to commend people for extraordinary or ordinary good work, as well as a chance to show residents that the Council is considering the City's values as it makes its best judgments on behalf of the City.

The ethics consultant took the silence to mean that the Council wasn't sure how to make the best use of this time or needed some additional guidance or practice. The kinds of questions that could be addressed are these:

a. How were you good stewards at the previous meeting?
b. Which part of the meeting did you feel was the Council acting "at its best"?
c. How are you approaching the City's value of teamwork since it's clear that members disagree with each other on various issues and that the majority has changed?
d. Why was this or that decision the "right thing to do" with your explanation framed in the language of ethics on the Pocket Card used in the second training: Your best judgment was that it would lead to these good consequences, respect citizen rights in this manner, be fair because of the way certain benefits were distributed or people considered, and advance the City's values in this or that way. Or, maybe your decision caused some harm that was unavoidable, but justifiable through the same reasoning.
e. How does the Council want to handle majority vs. minority opinions so residents understand that this is not about who won and who lost the last election, but rather about developing good policy, that democracy works through the process of negotiation and politics, that Councils and cities survive changes as a result of elections, and so on?
f. How might it be possible to have your discussions and diverse opinions lead to greater respect for the Council because it resembles the debates and carefully considered positions, say, of the U.S. Supreme Court, rather than an uncomfortable argument whose outcome on many decisions is easy to predict after just a few members have responded to the issue on the table?

These are the kinds of issues residents have been discussing. The moments of reflection is a chance for reflective comments that let residents know that they are witnessing ethics-in-action, that everything isn't always tied into a neat package with no loose ends, and that you're making your best judgment calls after carefully considering options, and that's why Council members have been elected.

RECOMMENDATION #3

Should the Mayor feel that he or the Council needs additional assistance with the Moments of Reflection, the consultant offers to work with the Mayor or the Council *pro bono* to design and/or facilitate the next two moments of reflection. Moments of

reflection can be critical to public trust when residents see the Council engaging in ethics-oriented conversation and discussion. Other outcomes can be achieved easily too: role modeling for other decision makers, and educating the public about how decisions are made for the common good. The consultant would also commit to letting Council know ahead of time what the focus questions will be so no one is surprised or feels put on the spot.

21. The Lobbyist Section of the New Open Government Ordinance

This report's fourth recommendation also arises from the open government discussion. The author of the ordinance was open to the Open Government Commission considering how to strengthen the lobbyist section of the new Ordinance. The best practice study of lobbyist ordinances, completed as part of the implementation program, suggests that a Council that is creating a world-class open government ordinance could easily create a world-class lobbyist section that is appropriate to Milpitas by adding a bit of clarification and an additional paragraph or two. Regulation of lobbyists is an important issue for residents of most cities. The calendar requirements of the new ordinance deal with a large part of what was in the rejected proposed lobbyist ordinance. With some few additions, the Council sends a strong signal to residents that it is exercising ethical leadership in the lobbyist area. The message is that Council and senior staff will disclose even contacts with lobbyists, where influence is exercised and the stage is often set for doing the City's business, but all of this happens outside the view of citizens.

RECOMMENDATION #4

The fourth recommendation is to direct the City Attorney to include additional clarifying language and necessary procedures about lobbyists to the new Open Government Ordinance.

This completes the first part of this report outlining rationale and recommendations to take care of some unfinished business. The remainder of the report pertains to where the City stands in reaching the program's goals and a plan for the next two years.

22. Steering Committee and Program Manager

If the Ethics Program is to become a sustainable program, it requires a Steering Committee comprised of diverse stakeholders, as well as City staff. City staff would not participate in discussions about activities directed toward politics or elections.

As the CAC has been a prime mover on this program, the recommendation is that the continuing oversight of the Ethics Program and the specific coordination of its program of on-going activities be assigned to the CAC, and specifically to a task force of six members, one of whom would serve as Chair. If it is at all possible, the recommendation here is to reappoint the three CAC members that serve on the Steering Committee and add three new members. One of the returning members should be asked (cajoled) to become Chair. Each would have voting rights. The committee should be asked to develop a plan to rotate members onto the committee, with two or three-year terms.

To this group of CAC members, the recommendation is to add three voting staff members, one of whom is asked to serve as Staff Program Director, working closely with the Chair of the Subcommittee. All the staff served with great distinction this year. The recommendation here is

to appoint the Director of Planning and Neighborhood Services, the Head of Human Resources, and the Head of IT. These positions have credibility with the other senior staff, the expertise necessary to help deal with the complex cases public officials are likely to encounter, and the wisdom that people in these positions gain. The Program Manager and the Chair of the Subcommittee would determine the agenda jointly in whatever way makes sense to them. The Program Director would be in regular contact with the City Manager about the program. Twice a year, at least, the City Manager should be on the agenda for a discussion about ways each can help the other.

In this second year of the program and three year plan, continuity is critical on this committee. If possible, the same program manager should be reappointed. It is further recommended that this Committee be constituted within the next 30 days (or sooner) and that, should budget be available, the project should continue as soon as possible.

RECOMMENDATION #5

In summary, then, the fifth recommendation is to establish a permanent oversight committee to guide the Ethics Program comprised of six CAC members and three staff members, who would normally be the Director of Planning and Neighborhood Services, the Head of HR and the Director of IT. It is further recommended that returning staff and CAC members be reappointed to the Committee, with one CAC member appointed as Chair and one staff person appointed Project Manager.

It is further recommended that the program not lose momentum and be started up again as soon as possible in this current year, should resources be available.

23. The Ethics Evaluation Panel

The March, 2004, Citizen Survey shows overwhelming support from citizens for an accountability system that holds people accountable for violations of the Ethics *Code*. The recommendation here is to continue the course this group is on, as described in the Ordinance governing them, and with the same personnel as currently constituted.

RECOMMENDATION #6

The sixth recommendation, a very strong recommendation, is that

> a. **this panel, especially the Lead Ethics Evaluator, be given moderate staff support with competency in putting together non-partisan background pieces and objective statements of fact. As it stands now, it is difficult for the Board to have access to the truth. The Assistant City Attorney has those skills and should be present at Ethics Evaluation Panel meetings.**
> b. **No such staff position is currently connected to the Panel, although the City Clerk provides help with meetings and details. The City Clerk's help should continue.**
> c. **The Lead Evaluator should be empowered and remunerated for working with the parties involved in a complaint to see if a fair resolution can be reached without the necessity of a full panel hearing. Often, a complainant simply wants an apology.**

24. Three-Year Goals and Outcomes

The goals described below were presented to the Council at the start of the summer (2004) when decisions were being made about implementing the Ethics *Code.* The goals here have guided the first year of the Ethics Program. It is proposed that these goals continue to be the goals for the next two years. Further, let us consider the work already done as the first year of a three-year plan. That perspective gives us a clearer picture of what the City accomplished in 2004 and what work remains to be done to reach the goals, including the goal of making this a sustainable City program.

This year and the next two are guided by three goals and outcomes for each. Specific programmatic objectives are presented.

The goals and outcomes are:

GOAL 1: Make the Code practical and useful for public officials who are expected to follow it, such that:
    a. Public officials can translate the Code into specific standards for their jobs;
    b. The Code's values and standards become an integral, important, and visible part of the major and minor decisions public officials and candidates make every day; and
    c. The Code holds everyone accountable for promises made to residents and supports the learning of skills to overcome stumbling blocks to following the Code.

2005: primary focus on this goal
2006: minor reinforcement of the habits for non-candidates, but major focus on the whole goal for candidates running for office.

2005 Activities: These are suggested activities. The Steering Committee should be involved in determining the final mix, especially after the assessment.

1. Each stakeholder group should engage in three programmatic contacts that focus on ethics, roughly scheduled one a quarter.
2. Prior to engaging in the first workshop, some simple skills assessment should be conducted to judge carry-over learning, if any, from the 2004 year training. An evaluation should be conducted at the end of each session. Each participant should also be given some activity to do in the next month to reinforce the usefulness of the skill to the work done for the City.
3. Each team or group should engage in regular conversation about some aspect of the Ethics Code and their work. This may be moments of reflection or some other activity, but it needs to be a regularly scheduled and identifiable activity.
4. Two of the three programmatic contacts should be workshops of 90 minutes in length. The focus in these workshops should be on mastery of skills identified below as the three habits of ethical leaders as well as goals a and b above. It is likely that ethical decision-making and communicating ethics will be the topic of the workshops.
5. The third programmatic contact may be a workshop, or a more targeted case discussion, dealing with stumbling blocks, or training responding to specific needs the group has identified. Identifying the need for the workshop is an important learning activity for the group in question and they will need some assistance to do this.
6. The Milpitas Ethics Web site should be used as a place to store and share ideas, problems, approaches, ethics resources, etc. Posting an idea for the third workshop or discussion session, for instance, could start some interesting dialogue.

2006 Activities: These are representative activities. The bulk of the activity should be directed from August to December at the Ethical Campaign Program.

1. A summer workshop for Council members on building public trust as Council during an election;
2. A workshop for Candidates and their supporters;
3. Assisting the League of Women Voters in a Final Word Forum;
4. A post-election assessment for Council, candidates, and public; and
5. Have the consultant available for conversations with candidates who need guidance working through the City's pocket card or problem solving. The consultant will not tell people what to do, but he or she could suggest questions to think about.

Goal c will continue to be met by the Ethics Evaluation Panel in both years.

GOAL 2: Make the Code an integral part of the organizational culture, style, and business of the City, such that:
      a. Public officials have the knowledge and skills to be available and credible role models for the Code;
      b. The Code helps the City to recognize strengths and take steps in real time (during a meeting, for example) to align actions more closely with core values; and
      c. The Code is discussed as habitually and comfortably as discussions about law, policy, budget, or services.

2005 focus on Goal 2a and 2c.
2006 focus on Goal 2b.

2005 Activities:
1. Begin a carefully planned process to build a culture of recognition, the positive incentive program that is critically important. Begin with coordination of Commissioner recognition dinner. Continue this in year 2.
2. Explore the wisdom of a community partners program, working from briefing prepared in 2004 contract by Dr. Shanks.
3. Revise the current website to make it more user friendly and explore intranet use of the site to encourage conversation, problem-solving, sharing of cases, etc. Make government ethics websites and additional appropriate training available on the site.
4. Make ethics coaching available to Council members as needed at the initiative of the Council member.
5. Goal 2a and 2c will also be met by the workshops previously discussed.

2006 Activities

1. Engage stakeholders in identifying stumbling blocks and working to develop skills to overcome them. Build capacity at all levels.
2. Begin discussions early in the year about assessing and revising the Ethics Code as necessary before the end of the year. The assessment is a great opportunity to engage the public in conversations, but not as extensively as last time, with the widespread feedback on any proposed revisions.
3. In each year, the City Manager should plan, with the Steering Committee, programmatic contacts for Senior Staff in the same number and approach as are described above.

GOAL 3: Make the Code real in the lived experience of Milpitas residents, such that:
      a. Residents perceive that candidates run hard-hitting, honest, fair, and respectful campaigns because, in reality, they do; and

b. Residents can name specific examples of things public officials have said or done that are examples of ethical leadership, effective team-work, and trust-worthy behavior.

2005: Some outreach to residents.
2006: Primary focus on this goal.

2005 Activities: City staff should work with the Steering Committee to be sure all residents get information of some sort about the Ethics Program each quarter. This could be done in a variety of ways. The goal by the end of the year is that residents' awareness of the Ethics Program has grown to some target the Steering Committee should determine. 2006 activities should be planned during 2005.

Conversations should be had during 2005-6 to gain assistance and commitment to the goals of the Ethics Program from political consultants, employee unions, newspapers and South Bay Labor Council. The kind of contact and who makes it should be carefully discussed. Start working now with people whose decisions impact the City.

2006 Activities: Drawing on experience from around the state or the country, plan a full-scale public information campaign giving voters the skills they need to judge whether the campaign is ethically appropriate or not. An assessment after the election should be conducted.

25. The Program's 'big idea': the three habits of ethical leadership

All the training sessions this year were guided by the "big idea" pictured below. This model holds that ethical leadership requires three habits: following the *Code of Ethics*; using a decision-making process to make ethical decisions, and identifying stumbling blocks and the learning skills to overcome them. This is the learning that individuals, groups, and the City as a whole need to practice until these become habits.

This past year, Council and senior staff spent one workshop on step 1 and one on step 2. In the case of Council, the first workshop and a part of the second spent time on step 3, with limited success. Commissioners received training on the whole model in one workshop, but with a focus on steps 1 and 2. Half the Commissioners attended no workshops. Commission Liaisons had a separate workshop, which focused on the same content as the Commissioner workshop.
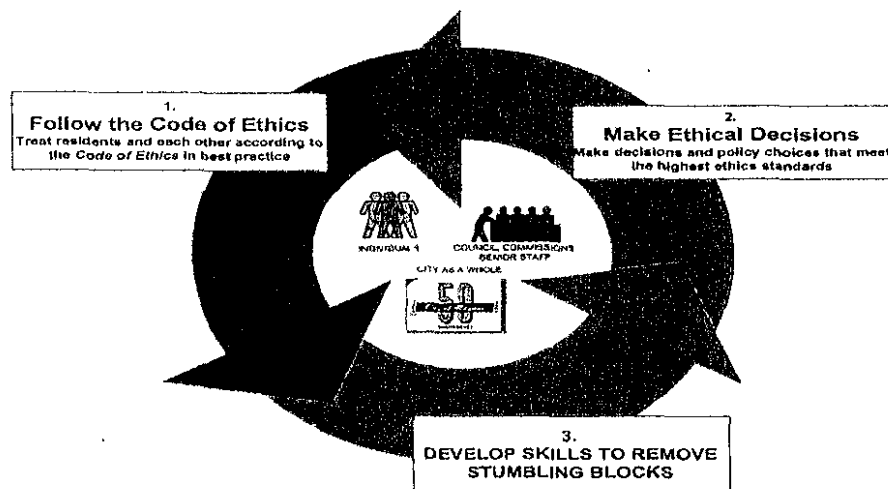
26.   Ethics Consultant

The City should engage the services of a qualified local (i.e., Bay Area) Ethics Consultant with experience in the ethics of campaigns and local government ethics. While it is possible that such a consultant could be found in other parts of the state, a non-local consultant would increase the cost and reduce the efficiency of the project.

Based on the proposal herein, the year 2005 activities should be budgeted at or around $15,000. Year 2006 activities, because of the campaign and the assessment, should be budgeted at or around $30,000.

The Ethics Consultant should continue to be a neutral and fair third-party who has full-time employment elsewhere and whose livelihood is not dependent on a contract with the City of Milpitas. The Steering Committee, through its Chair and Project Manager, should provide feedback to the Consultant on the draft of all documents, but final documents bearing the Consultant's name will represent the consultant's opinion and will include all items he or she determines are necessary for that document.

The Consultant will advise the Steering Committee and be a non-voting member, conduct all appropriate training sessions, provide research on best-practices for all Program activities, conduct assessments, and be available for other help to the Program on an as-needed basis. It is critically important that the Consultant has the trust of the City Manager and the Council. The Council and City Manager should discuss the most appropriate way to build such trust, as should the Steering Committee, with a concrete course of action determined within the first month of hiring the Consultant. More communication between the Consultant and the Council leads to more certainty on everyone's part about what the other is doing and what those actions mean; that kind of certainty leads to increased trust.

Important note: The activities recommended here, as well as the role of the Consultant described in this paragraph, are *not* based on the assumption that the current Consultant will continue to work with the City of Milpitas. This report has been written from the perspective that the current contract ends now. Neither side has engaged in discussions or made indications of any kind about even the possibility of a future relationship. This has left Dr. Shanks free to make the best recommendations he can to the City, regardless of who eventually works with the City as Consultant.

RECOMMENDATION #7

The seventh recommendation is to adopt the plan for 2005-2006 as described above.

27.   Conclusion

"We hold these truths to be self-evident:

*   that all men are created equal,
*   that they are endowed by their Creator with certain unalienable Rights,
*   that among these are Life, Liberty and the pursuit of Happiness.
*   That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,
*   That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its

foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

<p style="text-align:right">--from the Declaration of Independence 1776</p>

Life today is very complex, both for citizens and for their public officials. So it is easy for us to forget the ideals and the practicalities of our public life. The first sentence of the Preamble to the Milpitas Code of Ethics says, "Ours is a government of the people." It is meant to remind the people and those who serve as its government of the rights of the people and the relationship of people to their government as described in the core documents that founded our Country.

The current report has reflected this relationship by noting 1.) the leadership role the public has played in bringing the Milpitas Community Ethics Program to the place where it is today; 2.) the right of the people to ethical leadership; 3.) the relationship between ethical leadership and public trust; and 4.) the necessity of public trust for authentic and practical government.

To make this even more practical, consider these "Ten Reasons Civic Leaders Should Model Ethical Leadership" (an adaptation of a web posting called "Ten Reasons Leaders Should Model Ethical Behavior). Note that these are also answers to the two questions on the pocket card: How does the Ethics Program advance the City's core values? Why is continuing the Program the Ethical Thing to do?

Ethical Leadership and the Ethics Program:

1. Reduce pressure on public officials and senior staff to compromise ethical standards.
2. Increase willingness to report misconduct and ethical violations.
3. Improve trust and respect at all levels among citizens, within the City organization, and on Council, Commissions, teams and workgroups.
4. Protect the positive reputation of the City.
5. Encourage early detection and resolution of problem areas.
6. Foster a positive work "culture of recognition" and improved citizen services.
7. Provide an incentive and framework for ethical decision making.
8. Increase pride in the organization, professionalism, and productivity.
9. Enhance ability to attract and retain high-quality and diverse public officials and City staff.
10. Ensure the long-term viability of the City's government and services by aligning preferred values with actual values and matching citizen expectations with government promises and performance.

Finally, let us conclude this year and this stage of the effort with this thought, again from The *Soul of Politics*. Jim Wallis writes:

> Politics is the discourse of our public life. There are real limits to what politics can provide to better the human condition. But politics can make a great difference, for good and for evil, in the ways we live together. Political leaders can appeal to people's best instincts...or manipulate their worst impulses...Which values or fears are awakened or appealed to is, perhaps, the best moral test of politics and politicians.
>
> It is possible to evoke in people a genuine desire to transcend our more selfish interests and respond to a larger vision that gives us a sense of purpose, direction, meaning, and even community. Real political leadership provides that very thing: it offers to lead people to where, in their best selves, they really want to go. (p. xviii)

Many of the people of Milpitas are asking that the current political culture be altered and that the evolution (rather than a revolution) that began with such promise in the past year continues, the evolution that will result in the Code of Ethics and the Behavioral Standards becoming even more characteristic of the way that Milpitas' public officials at all levels conduct their business on behalf of the people, on the dais and off. The best hopes of the people lie in the Open Government Ordinance, the Ethics Evaluation Panel Ordinance, the Code of Ethics and Behavioral Standards Resolution, and in the continued practical development of these programs.

Dr. Shanks looks forward to discussing these recommendations and this document with the Council. He thanks the Council, Commissioners, City Management, Senior City Staff, Candidates for Council, and the people of Milpitas for the opportunity to work with you this past year. He holds the City of Milpitas in the highest regard for its efforts to live its core values and maintain the highest standards of conduct for the people of Milpitas, who deserve no less from their public officials.